

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TD AMERITRADE, INC.,

Plaintiff,

v.

THE NEVADA AGENCY AND TRUST
COMPANY,

Defendant.

3:08-CV-00245-LRH-RAM

ORDER

Before the court is Plaintiff TD Ameritrade, Inc.'s ("Ameritrade") motion for reconsideration (#90) of this court's Order (#88) and Judgment (#89) granting summary judgment to Defendant The Nevada Agency and Trust Company ("NATCO"). NATCO filed an opposition (#93), and Ameritrade filed a reply (#94).

Ameritrade moves for reconsideration pursuant to Fed. R. Civ. P. 59(e). A district court may alter or amend a judgment under Rule 59(e) where the court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Ameritrade contends the court committed clear error in two respects.

Ameritrade contends first that the court clearly erred in finding that the condition of Nev. Rev. Stat. § 104.8401(1)(e) was not satisfied. Ameritrade argues that in answering the question of

1 whether Ameritrade had actual knowledge of the restriction Save the World Air imposed on the
2 transfer of STWA Shares for purposes of Nev. Rev. Stat. § 104.8204, this court erroneously
3 considered only Ameritrade's knowledge of the court-issued preliminary injunction. Ameritrade
4 argues that the court could have found that Ameritrade had "actual knowledge of the restriction"
5 within the meaning of § 104.8204 only by finding that Ameritrade "had actual knowledge of the
6 July 3, 2002 letter [from Save the World Air to NATCO] or any other restriction Save the World
7 Air may have placed on the transfer." Doc. #90, p. 3.

8 The court disagrees. Under the plain language of the statute, "[a] restriction on transfer of a
9 security imposed by the issuer" (here, Save the World Air) is effective against Ameritrade if it had
10 "actual knowledge of *the restriction*." Nev. Rev. Stat. § 104.8204 (emphasis added). The "actual
11 knowledge" requirement refers only to the restriction itself, not to its imposition by the issuer.
12 Thus, to satisfy the "actual knowledge" requirement, it is sufficient that Ameritrade had actual
13 knowledge there was a restriction against transfer of the securities. Lack of knowledge as to the
14 particularities of the restriction's imposition is no excuse to its violation.

15 Ameritrade next contends that the court clearly erred in finding that Ameritrade had actual
16 notice. Ameritrade argues that in reaching that finding, the court misapplied the notice provision of
17 Nev. Rev. Stat. § 104.1202(6) and failed to identify any "natural person" at Ameritrade who may
18 have known of the restriction and why that person should have communicated the information to
19 the person processing the transfer. Doc. #90, p. 6.

20 Once again, the court disagrees with Ameritrade's unnatural reading of § 104.1202(6) and
21 the court's order. As noted in the court's order, it is beyond dispute that the notes made on
22 Muller's accounts regarding the prohibition on transfer of shares were made by an Ameritrade
23 representative—a "natural person" within the meaning of the statute. It is also uncontroverted that
24 the additional notes in 2004 erroneously clearing the shares for transfer were also made by an
25 Ameritrade representative. Because due diligence required that Ameritrade representative to make
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1 accurate notes on Muller's account regarding the restriction on transfer of shares, knowledge of the
2 restriction is imputed to the organization. *See* Nev. Rev. Stat. § 104.1202(6) (providing that
3 knowledge received by an organization is effective for particular transaction "in any event, from the
4 time it would have been brought to the natural person's attention if the organization had exercised
5 due diligence").

6 IT IS THEREFORE ORDERED that Plaintiff's motion for reconsideration (#90) is
7 DENIED.

8 IT IS SO ORDERED.

9 DATED this 2nd day of May, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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